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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,101

03/11/2004

Marion A. Keyes

06005/38045A

6057

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09/03/2008

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EXAMINER

ADE, OGER GARCIA

ART UNIT

PAPER NUMBER

3687

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,101	<b>Applicant(s)</b> KEYES ET AL.	
	<b>Examiner</b> GARCIA ADE	<b>Art Unit</b> 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 27-107 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 27-107 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :8/14/08-8/16/06-12/28/04-11/15/04.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Group I: claims 1-26 in the reply filed on 07/30/08 is acknowledged. The traversal is on the ground(s) that the restriction requirement is improper. This is not found persuasive because these inventions are distinct.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Krist et al. [US 6,038,540].

**As per claims 1-26**, Krist discloses a system for use in a process plant [see abstract], comprising:

a) a first data source including economic data related to economic factors associated with the operation of the process plant [see abstract (e.g. **economic inputs**)];

b) a second data source including process control data related to control operations within the process plant [see abstract (e.g. **control system features an interactive optimization modeling system for determining manipulated process variables**)];

c) a model that models the operation of the plant using the economic data and the process control data and that produces a model output [see paragraphs 5 and 6 of the summary section of the invention (e.g. **output means, for transmitting command signals which include at least one manipulated parameter variable that is used to govern the physical process equipment, an adaptive controller comprising: second input means for acquiring the monetary value of at least one fluctuating economic variable**)];

d) an application that uses the model output to perform a function with respect to the operation of the process plant [see paragraph 8 of the summary section of the invention (e.g. **interactive optimization means, said real-time executive means having means for periodically transferring at least some of said input signals from said inputs means to said interactive optimization means and means for transferring at least one manipulated parameter variable from said interactive optimization means to said output means**)];

e) and an information server communicatively connected between the first and second data sources and the model [as illustrated in figure 7 (e.g. **block 72**)], the information server including a router [as illustrated in figure 7 (e.g. **block 74**)]; wherein the first and the second data sources are adapted to automatically

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send the economic data and the process control data to the information server via first and second messages and wherein the router is adapted to process the first and second messages to determine that the economic data and the process control data contained within the first and second messages is to be sent to the model and to automatically deliver the economic data and the process control data to the model [see paragraph 150 of the detailed discussion section of the invention, read as: Setpoint Output Operation Step 910, the new economic setpoints are transmitted to Process Control Computer 71. SOLO Executive Engine 820 reads and references Data Common 821 to acquire the economic setpoints and writes and transmits said setpoints to PCC write engine 826.

PCC write engine 826 references and reads Data to Write to PCC 810 to define and confirm validity of logical identifiers for the setpoints, ***formulates a message to be transmitted*** as Write to PCS Data Vector 75, and formulates, writes, and transmits Write to PCS Data Vector 75 to Communication Interface 72. Communication Interface 72 subsequently first reads and then writes and transmits the message containing the new ***economic setpoints to Process Control Computer 71 for use in control of the manufacturing system 70 in an economic manner***].

#### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The PTO 1449 forms have been reviewed and considered.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARCIA ADE whose telephone number is (571)272-5586. The examiner can normally be reached on M-F 8:30AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571.272.3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Garcia Ade  
Examiner  
Art Unit 3687

ga

/Vanel Frenel/

Examiner, Art Unit 3687

September 1, 2008